

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

HARDY STORAGE COMPANY, LLC,

Plaintiff,

v.

// CIVIL ACTION NO. 2:06CV17
(Judge Keeley)

AN EASEMENT FOR TANK SITES ON
PROPERTIES IN HARDY COUNTY,
WEST VIRGINIA, ET AL.,

Defendants.

ORDER

On October 15, 2007, plaintiff, Hardy Storage Company, LLC, filed its motion for summary judgment in the above-styled case. The Court notes that the defendants are proceeding pro se. The Court has a mandatory duty to advise the defendants of the right to file counter-affidavits or other responsive material and to the fact that failure to so respond may result in the entry of summary judgment against them. Davis v. Zahradnick, 600 F.2d 458, 460 (4th Cir. 1979); Roseboro v. Garrison, 528 F.2d 309, 310 (4th Cir. 1975).

To further apprise the defendants of what is required, the Court notes that summary judgment is appropriate "if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Fed.R.Civ.Proc. 56(c). When a moving party supports its motion under Rule 56 with affidavits and other appropriate materials pursuant to the rule, the opposing party "may not rest upon the mere allegations or denials of the adverse party's pleadings, but ... the response ... by affidavits or as otherwise provided in this rule, must set forth specific

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facts showing that there is a genuine issue for trial." Fed.R.Civ.Proc. 56(e). Summary judgment is proper "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there [being] no genuine issue for trial." Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (quotation omitted).

The defendants are **ORDERED** to file any opposition to the pending motion within thirty (30) days of receipt of this Order.

The Clerk is directed to transmit copies of this Order to the counsel of record and to the pro se defendants, certified mail, return receipt requested.

DATED: October 17, 2007

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE